

REMARKS/ARGUMENTS

Claims 1, 3, 5 through 7, 20 through 23, 26, and 27 are pending in the application. Claims 2, 4, 8 through 19, 24, 25, and 28 through 30 are canceled without prejudice.

Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Petrus. Claims 10 through 15 and 28 through 30 are canceled rendering the rejections thereto moot.

Independent claim 1 recites "...wherein said one or more malodor counteractant materials is present between about 0.01 grams to about 0.15 grams..." (emphasis added)

Petrus discloses the addition of deodorant as follows: "A deodorant, such as pectin, may also be added to the tampon for aromatic purposes" (col. 6, lines 49 – 51).

As acknowledged in the Action, Petrus does not disclose or suggest a specific or preferred range of deodorant. Thus Petrus does not disclose all elements of the claim 1.

Further, the present application provides data that shows that the odor-absorbing efficacy of the malodor counteractant glycerin, for example, is not a simple linear relationship (see Figure 2). On page 18, line 3 to page 19, line 2, the method and data for *in vitro* testing of malodor absorption was provided, showing that "as little as 0.01 grams of glycerin absorbed 70% of the synthetic vaginal malodor," while "about 0.05 grams of glycerin data eliminated about 92% of synthetic vaginal malodor." As shown in Figure 2, there are diminishing returns for additional odor-absorbing activity as the amounts of glycerin increase

and the odor-absorbing efficacy approaches 100%. The recited amounts are therefore more than simply determining an optimum value from within a previously-disclosed range, as Petrus does not disclose any data showing the correlation of any particular amounts of pectin (or of any deodorant material) with its efficacy in absorbing odors, and thus is outside the ambit of situations such as occurred in *in re Boesch*, as cited in the Action. Applicants respectfully submit that the data demonstrate that the particular claimed amounts of malodor counteractant materials recited in amended claim 1 are not arbitrary, and, without benefit of hindsight reasoning, would not have been obvious to a person of skill in the art.

Claim 1 also provides a fibrous tampon.

As noted above, Petrus discloses a tampon made of polymeric foam (col. 4, lines 27 – 28; col. 5, lines 29 – 36), and does not specifically disclose or suggest a fibrous tampon, as recited by claim 1.

In addition, claim 1 provides a fibrous tampon for absorbing body fluids.

Petrus provides “[i]t is also important that the outer region, comprising between 10% to 20% cross-section of the member, be impregnated with a lubricant. The lubricant is preferably of greater density than the solution used to impregnate the inner region. Thus, the lubricant helps seal the openings of any imperfections or passageways existing throughout the member against movement of sperm or STDs therethrough. The lubricant effectively coats the outer surface and operates as a partial barrier between the body cavity opening and the inner pores of the member. Moreover, the coating provides lubrication to the body cavity, and is removed in the area which contacts the body cavity during insertion. Thus, spermicide-impregnated inner pores of the member allow release of spermicide to the surface areas removed of lubricant (i.e., at the interface between the spherical member and the body cavity wall).” (col. 4, lines 7-24).

Thus, the “tampon” of Petrus seals openings of any imperfections or passageways existing throughout the member against movement of sperm or STDs therethrough and releases spermicide to the surface areas removed of lubricant, and, thus, teaches away from a fibrous tampon for absorbing body fluids, as recited in claim 1.

Accordingly, Applicants request reconsideration and withdrawal of the rejection to claim 1 brought under §103(a).

Dependent claims 3 and 5 would also not have been obvious over Petrus for the reasons provided for the independent claim above. Therefore, Applicants request reconsideration and withdrawal of the rejection to claims 3 and 5 brought under §103(a).

Independent claim 6, as amended, recites “...the tampon comprising glycerin present between about 0.01 grams to about 0.05 grams...”

Petrus merely provides a lubricant/moisturizer “on only an outer region (22)” and provides examples of lubricants such as glycerin, sorbic acid, and mineral oil (col. 6, lines 37 – 43).

On page 18, line 3 to page 19, line 2, the method and data for *in vitro* testing of malodor absorption was provided, showing that “as little as 0.01 grams of glycerin absorbed 70% of the synthetic vaginal malodor,” while “about 0.05 grams of glycerin data eliminated about 92% of synthetic vaginal malodor.” As shown in Figure 2, there are diminishing returns for additional odor-absorbing activity as the amounts of glycerin increase and the odor-absorbing efficacy approaches 100%. Thus, the range of about 0.01 grams to about 0.05 grams is therefore more than simply determining an optimum value from within a previously-disclosed range, as Petrus does not disclose any data showing the

correlation of any particular amounts of glycerin with its efficacy in absorbing odors, and thus is outside the ambit of situations such as occurred in *in re Boesch*, as cited in the Action. Applicants respectfully submit that the data demonstrate that the particular claimed amounts of malodor counteractant materials recited in amended claim 6 are not arbitrary, and, without benefit of hindsight reasoning, would not have been obvious to a person of skill in the art. Moreover, glycerin present between about 0.01 grams to about 0.05 grams, as recited in claim 6, provides the new and beneficial result of efficacy in absorbing odors, and, thus, would not be obvious.

Independent claim 6 also provides a fibrous tampon. As discussed above, Petrus teaches away from a fibrous tampon for absorbing body fluids.

Independent claim 6 further provides a fibrous tampon for absorbing body fluids. As discussed above, Petrus teaches away from a fibrous tampon for absorbing body fluids.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 6 brought under §103(a).

Dependent claim 7 would also not have been obvious over Petrus for at least the reasons provided for independent claim 6 above. Therefore, Applicants request reconsideration and withdrawal of the rejection to claim 7 brought under §103(a).

Independent claim 20 recites "...a fibrous material suitable for absorbing said body fluids." (emphasis added).

Petrus discloses a tampon made of polymeric foam (col. 4, lines 27 – 28; col. 5, lines 29 – 36), and does not disclose or suggest a tampon comprising a fibrous material. For this reason alone, Petrus does not disclose or suggest all

features of claim 20, and thereby does not do so for its dependent claims 21 through 23.

In addition, as discussed above in relation to claim 1, the “tampon” of Petrus seals openings of any imperfections or passageways existing throughout the member against movement of sperm or STDs therethrough and releases spermicide to the surface areas removed of lubricant. Thus, Petrus teaches away from a fibrous material suitable for absorbing said body fluids, as recited in claim 20.

Independent claim 20 also recites “a liquid glycerin that does not support microbial growth, disposed within said fibrous material of said tampon to absorb odors associated with said body fluids...” (emphasis added).

Petrus discloses placement of a lubricant/moisturizer “on only an outer region (22)” (emphasis added) of the tampon (col. 8, lines 57 – 60), where the outer region is “10% to 20% of said diameter of the tampon directly adjacent to the outer surface” (col. 10, lines 6 – 7), to assist with insertion and removal of the tampon. Petrus further provides a means to add lubricant to just the outer region: “sonic placement of lubricant within only the outer region ensures that any tears, holes, or imperfections in the sponge-like porous material will be fully sealed near the member surface” (col. 6, line 37; col. 7, lines 2 – 5). Petrus provides examples of lubricants such as glycerin, sorbic acid, and mineral oil (col. 6, lines 37 – 43). Thus, Petrus fails to disclose or suggest a liquid glycerin that does not support microbial growth, disposed within said fibrous material of said tampon to absorb odors associated with said body fluids, as recited by claim 20.

As Petrus only discloses the use of glycerin as a lubricant, the Action stated that the use of glycerin to absorb odors was taught in a secondary reference, U.S. Patent No. 4,880,417 to Yabrov (an anal pad to absorb odors from flatus). However, Yabrov provides “the deodorant used in absorbing layer 7

includes glycerin..." (col. 4, line 22). As discussed above, Petrus provides placement of a lubricant/moisturizer "on only an outer region (22)". Thus, modifying Petrus with the absorbing layer of Yabrov would render Petrus unsuitable for its intended purpose of providing a lubricant on only an outer region.

For all of these reasons, it would not have been obvious for the person of skill in the art to modify Petrus to produce a tampon comprising a liquid glycerin that does not support microbial growth, disposed within said fibrous material of said tampon to absorb odors associated with said body fluids, as recited in claim 20. Therefore, for these same reasons, dependent claims 21 through 23 would not have been obvious over the cited art, taken alone or in combination.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections to claims 21 through 23 brought under §103(a).

Independent claim 26 provides, in part, that a "multi-layered fibrous absorbent article has an inner layer and an outer layer".

As discussed above, Petrus teaches away from a fibrous material suitable for absorbing said body fluids, as recited in claim 20. Similarly, Petrus teaches away from a multi-layered fibrous absorbent article that has an inner layer and an outer layer, as recited by claim 26.

Independent claim 26 further provides said glycerin and said at least one additional malodor counteractant material are within said multi-layered fibrous absorbent article on and/or in said inner layer.

As discussed above for claim 20, Petrus fails to disclose or suggest a liquid glycerin that does not support microbial growth, disposed within said fibrous material of said tampon to absorb odors associated with said body fluids.

Similarly, Petrus fails to disclose or suggest that the glycerin and the at least one additional malodor counteractant material are within the multi-layered fibrous absorbent article, let alone on and/or in the inner layer, as recited by claim 26.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 26 brought under §103(a).

Independent claim 27 provides, in part, “applying to said vaginal area a fibrous absorbent article having a fibrous material suitable for absorbing body fluids and a liquid glycerin that does not support microbial growth disposed in said fibrous material”.

As discussed above for claim 20, Petrus fails to disclose or suggest a liquid glycerin that does not support microbial growth, disposed within the fibrous material of the tampon to absorb odors associated with the body fluids. Similarly, Petrus fails to disclose or suggest applying to the vaginal area a fibrous absorbent article having a fibrous material suitable for absorbing body fluids and a liquid glycerin that does not support microbial growth disposed in the fibrous material, as recited by claim 27.

Independent claim 27 further provides that “said liquid glycerin is present in an amount between about 0.01 grams to about 0.05 grams”.

As discussed above for claim 6, Petrus does not disclose or suggest liquid glycerin that is present in an amount between about 0.01 grams to about 0.05 grams and, furthermore, claim 6 provides a new and beneficial result of efficacy in absorbing odors, and, thus, would not be obvious.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 27 brought under §103(a).

In view of the above, Applicants respectfully submit that the claims presented in this application are patentably distinct over the cited references and combinations of references. Accordingly, Applicants respectfully request favorable consideration and that this application be passed to allowance.

Respectfully submitted,

Date: October 31, 2007

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

Charles N.J. Ruggiero

Reg. No. 28,468

Attorney for Applicants

Ohlandt, Greeley, Ruggiero & Perle, LLP

One Landmark Square, 10th Floor

Stamford, CT 06901-2682

Tel: (203) 327-4500

Fax: (203) 327-6401